

Ms. COLLINS. I thank the Chair.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 300 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Rhode Island is recognized.

IN HONOR OF STANLEY KIMMITT

Mr. REED. Madam President, I rise to commemorate the life and accomplishments of Stan Kimmitt, former Secretary of the Senate Majority and Secretary of the Senate, retired Army colonel and loving husband and father. On December 7, 2004, the Senate and the Washington community lost a devoted friend, one whose work honored the institution of the Senate and the value of bi-partisanship.

Throughout his careers in the military, political and corporate worlds, Stan Kimmitt dedicated his life to public service and democratic ideals. He first served our Nation in WW II and Korea, then as Majority Leader Mike Mansfield's senior staff member for 11 years and later for 5 years as Secretary of the Senate and finally as a consultant.

Stan was born on April 5, 1918 in Lewistown, MT. His father was a wheat farmer until drought destroyed the family's crop in the early 1920s. The family moved to Great Falls, MT, where Stan spent the remainder of his childhood. He enrolled at the University of Montana where he took an Asian history class taught by a man who would be very influential in his life, a man named Mike Mansfield.

In June of 1941, Stan was drafted out of college and began what would become a 24-year Army career. He was sent to Europe where he was a combat commander and fought in the Battle of the Bulge. He crossed the bridge at Remagen and was part of the first U.S. division to occupy Berlin. Stan entered the Korean War as a first lieutenant, where he served as an artillery officer at Pork Chop Hill. After completing his bachelor's degree at Utah State University, he went back to the Army to serve in Europe. The Army later assigned him to serve as secretary of the Army office of legislative liaison to the Senate, his first of three terms in this post. During his assignment to the Senate, he renewed his connection to the Senate Majority Leader from Montana, Senator Mike Mansfield.

By the time Stan retired from the Army in 1966 as a colonel, he was decorated with the Silver Star, the Legion of Merit, the Bronze Star for Valor with Three Oak Leaf Clusters and was inducted into the Field Artillery Officer Candidate School Hall of Fame.

He approached his career in the Senate in the same manner with which he approached his commitment to the

Army, with integrity, with fairness, and with an enormous deal of respect for the institution. Stan was always troubled by the partisanship in Washington because he thought of the institution as a family. He honored the principles of the party, but always knew that it was part of a bigger picture. He was grateful for the opportunity to have served Senator Mansfield but, above all, Stan was grateful to have served in the United States Senate.

Even after many years in Washington, true to his roots, Stan always considered himself "a gopher-shooting Montana boy at heart." I had the privilege of knowing Stan through his sons Robert, Jay and Mark, they were contemporaries of mine at West Point.

They established extraordinary careers in their own capacity. Bob Kimmitt was former Ambassador to Germany under President Bush. Jay Kimmitt served this institution as a member of the Appropriations staff. Mark Kimmitt is today a general officer to the U.S. Army.

Stan had a large family. He leaves behind his wife Eunice, his 5 children, his 12 grandchildren, and 1 great-grandchild. I extend my deepest condolences to his friends and his family. Stan Kimmitt served this Nation with distinction; the Senate shall miss such a devoted friend and such a humble servant.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

CLASS ACTION FAIRNESS ACT

Mr. FRIST. Madam President, in about 40 minutes or so we will be formally bringing to the floor S. 5, the Class Action Fairness Act. There will be opening statements over the course of the afternoon. We will not be submitting amendments specifically on the bill today or voting on the bill this afternoon, but I would like to take a few minutes and introduce my strong support on this important bill, a bill we have worked on for several years now in a bipartisan way. It is important, I believe, to put the debate in context.

This particular bill gives us the first opportunity to take a major step forward on this floor to halt lawsuit abuses that occur across the country. Every 2 seconds a lawsuit is filed in America—every 2 seconds. In 2002, that added up to 16.3 million lawsuits filed in State courts.

In the past decade, litigation has skyrocketed, creating the most expensive litigation system in the world. In 2003, the tort system cost an incredible \$246 billion. In other words, that is approximately \$845 for every man, woman, and child.

At the current rate of increase, it is estimated that the per capita cost of

the tort system will go up to \$1,000 per person by 2006. That is \$4,000 for a family of four. Nationally, the tort system costs more than the entire economic output of my own State of Tennessee.

The result of this runaway litigation? Clogged courts, wasted taxpayers' dollars, restrained competitiveness, and unjust settlements that award huge attorney fees at the expense of injured victims who often get a coupon or nothing at all.

Businesses spend millions of dollars each year defending themselves against lawsuits, many of them frivolous.

Home Depot is now one of America's largest and most successful companies, but Bernie Marcus, who cofounded Home Depot back in 1978, says his business could never have gotten off the ground in the current legal climate. That is thousands of jobs that would have never been created, millions of products never sold, and prices that would never have been introduced for the benefit of consumers.

Contrary to popular perception, small businesses, which are the engine of economic growth in our country, are the ones which are hardest hit by the lawsuit industry—not the large corporations. Small businesses take in 25 percent of America's business revenue but they bear 68 percent of the business tort costs.

Let me repeat: Small businesses take in 25 percent of America's business revenue but they bear 68 percent of the tort costs.

They spend a staggering \$88 billion a year on legal fees—\$88 billion that could be used to hire more workers, create more jobs, expand their businesses, or develop new products and services.

Many small businesses can't afford the legal burden, so they close up shop and jobs are lost—and the economy overall suffers.

Clearly, it is time for reform. We simply cannot afford the status quo. The cost of doing business in America keeps going up while respect for our legal system goes down.

That is why today, as a first step, we are tackling class action. We should consider focusing on other areas of lawsuit abuse, including medical liability, asbestos, and bankruptcy—and in due time we will do just that. But we are beginning with class action to help those injured by negligence who often receive little or nothing while their attorneys pocket millions.

Class action serves an important purpose in our justice system. We all know that. Class action lawsuits allow plaintiffs whose injuries are not big enough to justify the legal expense individually to combine their claims into one suit against a common defendant. This is an important and valuable tool to keep unscrupulous companies honest and to compensate legitimate victims.

But the system has gotten off track. Opportunistic attorneys are distorting

the process to generate excessive attorney fees at the expense of the injured plaintiffs. Take, for example, a case in my home State involving faulty plastic pipes.

Throughout the 1970s and the 1980s, 6 million to 10 million new homes and apartments were fitted with the plastic piping. PB pipes, as they are known, were generally considered cheaper and more durable than either copper or galvanized steel systems. They were especially popular in the Sun Belt where we were experiencing a huge housing boom. Before long, however, the pipes and the fittings began to fail, causing leaks and property damage.

A class action suit was filed on behalf of the homeowners who were stuck with these defective pipes. After extensive litigation, the lawyers reached a deal. The homeowners were eligible to receive less than 10 percent of the total settlement fund—less than 10 percent. Meanwhile, the plaintiffs' attorneys negotiated for themselves a \$45 million payday—the equivalent of \$2,000 per hour. This is just one of many examples of consumers getting a fraction of the total settlement, while the lawyers got millions.

In fact, the Class Action Fairness Act enumerates a consumer class action bill of rights which will put an end to these unfair compensation packages. Under the Class Action Fairness Act, lawyers' fees for coupon settlements must be based either on the value of the coupons that are actually redeemed or the hours actually billed in prosecuting the class action. The consumer provisions will also require settlement deals to be written in plain English so plaintiffs know what is being negotiated and can make informed decisions about how to proceed.

Second, the bill before the Senate will help end the phenomenon of forum shopping. Aggressive trial lawyers have found there are a few counties that are what is known as lawsuit friendly. These elected State court judges are quick to certify a class action and juries are known to grant extravagant damage awards.

The same defendant can face copycat cases in different States, each granting a different result. These counties may have little or no geographic relationship to the plaintiffs or the defendant, but the trial lawyers know that simply the threat of suing in these counties can lead to large cash settlements. One study estimates that virtually every sector of the U.S. economy is on trial in only three State courts.

The Class Action Fairness Act moves those large nationwide cases that genuinely impact the interstate commerce to the Federal courts where they belong. These are commonsense reforms that will bring fairness back to the system.

For these reasons, the Class Action Fairness Act enjoys strong bipartisan

support. It was reported out of the Senate Judiciary Committee with a bipartisan majority. I am confident if we continue working together to pass a clean bill without amendment, it will pass the House of Representatives quickly and be ready for the President's signature. Class action is an important tool of justice, but it is a tool that has been badly abused. Class Action Fairness Act will bring rationality to the system which will benefit the truly injured, keep America competitive, and restore the public respect for the law.

I yield the floor.

Mrs. BOXER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mrs. BOXER. Madam President, may I ask what is the order at the current time?

The PRESIDING OFFICER. Morning business, with Senators permitted to speak for up to 10 minutes each.

Mrs. BOXER. Does one have to ask unanimous consent to go past the 10 minutes?

The PRESIDING OFFICER. Yes.

Mrs. BOXER. I ask unanimous consent I be able to speak for up to 20 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLASS ACTION LAWSUITS

Mrs. BOXER. Madam President, Senator FRIST came to the Senate to make some opening remarks about the class action bill that will be before the Senate. There will be a very good debate on this bill. I will make a couple of points.

The Senator said every 2 seconds a lawsuit is filed. I have no reason to doubt his number, but I wonder if he has looked at who is filing the lawsuits. The last time I looked, it was mostly one business suing another business. So before we come to the Senate and say we have to do something about the class action lawsuits, saying every 2 seconds a lawsuit is filed gives the wrong impression. We are going to get the exact numbers, but I make that point.

What we will find among colleagues, regardless of party, we all want to make sure these lawsuits are fair and that they are heard in a fair way. It appears when a class action lawsuit winds up in a Federal court, the judge, on many occasions, if not most occasions,

refuses to hear it because the plaintiffs come from so many different States. I will give an example of what these lawsuits are about.

When we talk about lawyers, we talk about fees, we talk about costs the lawyers have, or the time they have. We are overlooking the main point, which is: what are these class action lawsuits about? I will talk about a couple of these lawsuits because we need to put a human face on what they are.

Rob Sanders of Maryland explained how his daughter was killed, as were other children, by a deployed airbag in a Chrysler minivan. For years, consumers have pursued class action cases against Chrysler to force the company to replace existing airbags in such vehicles with others that deploy less rapidly and do not pose a safety risk to the car's occupant. As someone who is small in stature, I can say the automobile companies make these airbags to protect people who are much larger and much heavier, and much taller than appropriate for children. We have seen children killed by these airbags.

We all want airbags that work, regardless of our weight, our height, or stature. A class action was blocked in a Louisiana Federal court because the judge threw up his hands. But in Oklahoma—as we all know, that is a conservative State—the State court is proceeding to look at this even though the company has been working for years to block it. We are talking about life and death. We are talking about real victims.

Let's talk about the ability to make a living. Georgie Hartwig of Washington State is a former Wal-Mart employee who was cheated out of overtime pay. This is a common practice, unfortunately, at many of the company stores. Her class action case is being heard in State court. Three Federal courts have refused to hear such Wal-Mart cases, whereas five State courts have allowed them.

I am hopeful as we move this bill forward, we will ensure that at least some court will hear these important cases. They involve real people. I am sure Georgie Hartwig of Washington State and her colleagues at Wal-Mart have to raise a family and pay the rent. If we have a system that simply shuts the courthouse door, be it a State courthouse or a Federal courthouse, we are not fulfilling our job to make sure people get justice, they get it expeditiously, and it is done fairly.

Shelly Toliver is a firefighter from Connecticut. These are the people we are talking about here—Americans. Shelly Toliver, a firefighter from Connecticut, described how she brought a State class action suit against Credit Acceptance Corporation of Michigan for cheating her and other consumers out of their vehicles in violation of Connecticut law, destroying their credit ratings in the process. We all know